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**From:**

**Sent:** Tuesday, March 24, 2009 10:14:05 AM

**To:**

**Cc:**

**Subject:** Question re: 7405

Section 6501(a) provides that the Service must assess the tax imposed by title 26 within three years after the return is filed. The limitations period for assessing the income tax liability of an S corp shareholder runs from the date the shareholder files his or her original return, not the date on which the S Corp's information return is filed, and not the date of any subsequent amended return. Bufferd v. Commissioner, 506 U.S. 523 (1993), Estate of Robinson v. Commissioner, 101 T.C. 499 (1993)(When a taxpayer files an original return and subsequently files an amended return, the period of limitations begins to run from the date of the original return and not from the date the amended return is filed.) Under the facts you provided, assuming the shareholders filed their original returns on or before April 15, 2005, 2006, and 2007 (for tax years 2004, 2005, and 2006), the assessment statute has run for tax year 2004 (it expired on April 15, 2008 ), but remains open for 2005 and 2006. Please note that the assessment period for 2005 is only open until April 15, 2009.

The period for recovering an erroneous refund under section 7405 may also be open, depending on when the refund was made to the shareholders. A suit for recovery of an erroneous refund must be begun within two years after making the refund (or 5 years in the case of fraud or misrepresentation of a material fact).

I hope this is helpful and has answered your question. Please give me a call if you have any concerns or follow-up questions.